

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
South Marengo County Water and)	Proposed
Fire Protection Authority)	CONSENT ORDER
Linden, Marengo County, Alabama)	
)	
PWSID No. AL0001439)	
Permit No. 2016-567)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department") and the **South Marengo County Water and Fire Protection Authority** ("Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Alabama Safe Drinking Water Act ("ASDWA"), Ala. Code §§ 22-23-30 to 22-23-53, as amended and the ADEM Administrative Code of Regulations ("ADEM Admin. Code") promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a "public water system" as defined at Ala. Code § 22-23-31, located in Linden, Marengo County, Alabama. The Permittee's public water system is a "Community Water System" as defined at Ala. Code § 22-23-31, as amended.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-17, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-27. Additionally, pursuant to Ala. Code § 22-23-49(2), as amended, the Department is authorized to administer and enforce the provisions of the ASDWA.

4. On December 14, 2015, the Department issued Water Supply Permit No. 2016-567 ("Permit") to the Permittee, which authorizes the operation of its "public water system" under certain terms, limitations, and conditions.

5. On December 29, 2020, the Department issued a Notice of Violation ("NOV") to the Permittee, addressing violations noted herein. A partial response was submitted by the Permittee on February 5, 2021 and the Department requested additional information on February 18, 2021. As of the date of this Order, the Department has not received a complete response to the NOV.

DEPARTMENT'S CONTENTIONS

5. ADEM Admin. Code r. 335-7-10-.02 states: "Community and NTNC water systems shall employ operators certified in accordance with ADEM Division 10 regulations to be responsible for system or plant operations." In addition, the Permit requires that the Permittee notify the Department within thirty days of any personnel changes which affect certification compliance. The Permittee failed to employ a certified water operator from July 1, 2019 through December 18, 2020 and has failed to provide to the Department a contract outlining respective duties of the Permittee and its certified operator.

6. ADEM Admin. Code 335-7-10-.06(1) states: “The monthly operating report shall be submitted to the Department no later than the tenth of the following month in a format approved by the Department.” The Department did not receive timely monthly operating reports (MORs) for the following eight (8) months:

Report Month	Report Due Date	Report Receipt Date
August 2020	September 10, 2020	September 14, 2020
July 2020	August 10, 2020	August 14, 2020
March 2020	April 10, 2020	April 21, 2020
February 2020	March 10, 2020	March 13, 2020
December 2019	January 10, 2020	January 24, 2020
October 2019	November 10, 2019	November 12, 2019
September 2019	October 10, 2019	October 11, 2019
April 2019	May 10, 2019	May 17, 2019

7. ADEM Admin. Code r. 335-7-10-.06(6) states: “The water system shall maintain a copy of each monthly operating report. The report must be signed by a certified operator.” MORs received by the Department between March 2019 and November 2020 were not signed by a certified operator.

8. ADEM Admin. Code r. 335-7-2-.07(5)(h) states, “Failure to take every required monthly routine sample, repeated failure to provide results from required raw water samples, and failure to analyze for E. coli following a total coliform-positive routine sample is a monitoring violation requiring public notification.” The Permittee incurred a Revised Total Coliform Rule (RTCR) monitoring non-compliance by failing to collect and report results from the required number of total coliform samples for the monitoring period of October 2019.

9. ADEM Admin. Code r. 335-7-2-.20(d) states: “Within ten days of completion of each public notification, a certification that the system has fully complied

with the public notification regulations and a representative copy of each type of notice shall be submitted to the Department.” The Department has not received a completed public notification certification form for the October 2019 RTCR Monitoring Non-Compliance.

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PENALTY FACTORS

10. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty assessed in an order issued by the Department, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY: The Department considered the general nature of each violation and any available evidence of irreparable harm to the environment or threat to the public. The Permittee failed to employ a certified operator who is responsible for the operation of the water system per ADEM Admin. Code r. 335-7-10-.02, failed to collect and report results from the required number of total coliform samples per ADEM Admin. Code r. 335-7-2-.07 (5)(h), failed to submit MORs in a timely manner per ADEM Admin. Code r. 335-7-10-.06(1), and failed to submit MORs with the signature of a certified water operator per ADEM Admin. Code r. 335-7-10-.06(6).

B. THE STANDARD OF CARE: The Permittee could have easily avoided the non-technical violations. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has considered that delayed compliance, failure to have a certified operator responsible for operations, and failure to collect the samples required may have conferred an economic benefit upon the Permittee. In consideration of the economic benefit, the penalty has been enhanced.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of previous violations. The Permittee failed to submit a timely MOR for October 2018.

Additionally, the Permittee's November 2017 through February 2019 MORs were not signed by a certified operator.

F. THE ABILITY TO PAY: The Department has determined that the Permittee has an inability to pay a portion of the civil penalty. In consideration of the Permittee's inability to pay, the Department has decreased the penalty.

G. The civil penalty is summarized in Attachment A.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "the Parties") agree to enter into this CONSENT ORDER with the following terms:

A. The Permittee shall pay to the Department a civil penalty in the amount of **\$22,995.00** no later than forty-five (45) days after issuance of this Consent Order. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Failure to pay the civil penalty pursuant to this Consent Order may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee shall prepare and submit to the Department a written Corrective Action Plan (CAP), signed and stamped by a professional engineer licensed by the State of Alabama, detailing the plan of action the Permittee will initiate to achieve and maintain compliance with its Permit and ADEM Admin. Code r. 335-7. The CAP shall be submitted so that it is received by the Department no later than sixty (60) days after issuance of this Consent Order.

C. Upon written acceptance of the CAP by the Department, the Permittee shall implement the provisions of the CAP immediately.

D. The Permittee shall prepare and submit to the Department Biannual Progress Reports, signed and stamped by a professional engineer licensed by the State of Alabama, detailing the progress the Permittee has made toward achieving compliance with this Consent Order. The Reports shall be submitted so that they are received by the Department on June 30th and December 31st of each year until the Permittee has achieved compliance with all requirements of this Consent Order.

C. Within sixty (60) days of the issuance of this Consent Order, the Permittee shall submit to the Department a contract between the Permittee and its certified operator, outlining respective duties of the Permittee and its certified operator. This contract shall include, but not be limited to, the following:

1. Sampling and recording daily free chlorine residual at a site representative of the system and recording daily master meter readings.
2. Sampling monthly bacteriological contaminants at the sites included in the Bacteriological Sample Site Plan.
3. Sampling annual disinfection byproducts (hereinafter "DBPs") at the sites and dates included in the DBP Monitoring Plan.
4. Sampling every three years Lead and Copper contaminants at the sites and dates included in the Lead and Copper Plan.
5. Submitting each MOR via the eDWRS within ten calendar days following the end of the month with the signature of a certified operator.
6. A statement as to which of the parties is responsible for performing sampling.
7. A statement as to which of the parties is responsible for reporting the required data to the Department.

D. Within sixty (60) days of the issuance of this Consent Order, the Permittee shall submit to the Department a Public Notice Certification Form for the October 2019 Revised Total Coliform Rule Monitoring Non-Compliance.

E. The Permittee shall comply with the terms, limitations, and conditions of the Permit each and every day hereafter until Permit expiration.

F. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she

represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

F. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to

the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Permittee's public water system which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. Final approval and issuance of this Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

K. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

L. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. Any modification of this Consent Order must be agreed to in writing signed by both Parties.

O. Except as set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

SOUTH MARENGO WATER AND
Fire Protection Authority



Mr. Robert Shamburger
Chairman

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date: 5/7/21

Date: _____

Attachment A

**South Marengo County Water and Fire Protection Authority
Marengo County
AL0004139**

Description	# of Violations	(A) Seriousness of Violation*	(B) Standard of Care*	(C) Previous Violations*
Failure to collect proper number of samples.	1	\$450.00	\$225.00	\$-
Failure to properly report results.	1	\$225.00	\$115.00	\$-
Failure to submit/late submittal MOR (Purchase System)	8	\$900.00	\$450.00	\$100.00
No certified operator on duty (Purchase System)	76	\$8,550.00	\$4,275.00	\$-
MOR not signed by certified operator.	21	\$2,365.00	\$1,180.00	\$100.00
		\$12,490.00	\$6,245.00	\$200.00
		Total (A)	Total (B)	Total (C)
		Base Penalty Total		
		[Total (A) + Total (B) + Total (C)]		
		\$18,935.00		
		Mitigating Factors (-)		
		Economic Benefit (+)		
		\$12,160.00		
		Ability to Pay (-)		
		\$(8,100.00)		
		Other Factors (+/-)		
		INITIAL PENALTY		
		\$22,995.00		
		Total Adjustments (+/-)		
		\$-		
		FINAL PENALTY		
		\$22,995.00		

Footnotes

*See the "Department's Stipulations" portion of the Order for a detailed description of each violation and the penalty factors